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 Symantec Corporation

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

Symantec Corporation,)	Case No.
)	
Plaintiff,)	COMPLAINT FOR COPYRIGHT
)	INFRINGEMENT AND TRADEMARK
v.)	INFRINGEMENT
)	
Joseph Teshome, an individual and d/b/a Pronet)	DEMAND FOR A JURY TRIAL
Cyber Technologies and Does 1 – 10, inclusive,)	
)	
Defendants.)	

Plaintiff Symantec Corporation ("Symantec") for its Complaint alleges as follows:

I. Introduction

1. Symantec brings this action as a result of Defendants' systematic, unauthorized copying and distribution of Symantec's software products through sales via stand alone Internet sites. Defendants' actions, commonly known as software piracy, are willful and cause substantial damage to Symantec and to the software industry.

2. Symantec is a global leader in developing and providing security and performance enhancing software for computers. Its products and services protect computers and networks from malicious threats such as viruses, spoofing, intrusion by "hackers" and thieves, and unwanted interruptions such as spam. The security software industry is competitive, and Symantec undertakes great expense and risk in conceiving, developing, testing, manufacturing, marketing, and delivering its software products to consumers. Software piracy, including piracy on Internet sites, undermines Symantec's investment and creativity, and misleads and confuses consumers.

3. Defendants in this action have made, offered for sale, sold, and distributed unauthorized copies of Symantec software (the "Unauthorized Software Product") including at

1 least the following products: Norton SystemWorks 2006, Norton Internet Security 2003, Norton
2 Ghost 10.0, Norton AntiVirus 2004 and Norton AntiVirus 2005 (collectively "Symantec
3 Software") though Internet sites including but not limited to www.pronetcd.com and
4 www.ussoftwarestore.com (the "Websites"). Additional Doe defendants – whose identities will be
5 determined in discovery – support, assist, supervise and/or supply Defendants in these illegal
6 activities. Symantec owns registered United States copyrights and trademarks including but not
7 limited to the foregoing products and their associated marks, respectively.

8 4. Defendants' activities constitute willful copyright infringement and willful
9 trademark infringement pursuant to the Copyright Act of 1976, 17 U.S.C. § 101, *et seq.* (the
10 "Copyright Act.") and the Lanham Trademark Act, as amended, 15 U.S.C., § 1051, *et seq.* (the
11 "Lanham Act"). Symantec requests an injunction, and that Defendants pay damages, costs, and
12 attorneys' fees.

13 **II. Jurisdiction and Venue**

14 5. The Court has jurisdiction over the subject matter pursuant to 15 U.S.C. § 1121, 28
15 U.S.C. § 1331 and § 1338(a).

16 6. The events giving rise to the claims alleged herein occurred, among other places,
17 within this judicial district. Venue in the Northern District of California is proper pursuant to 28
18 U.S.C. § 1391(b) and § 1400(a).

19 **III. The Parties**

20 **A. Plaintiff Symantec and Its Products**

21 7. Symantec is a corporation duly organized and existing under the laws of the State of
22 Delaware, having its principal place of business in Cupertino, California.

23 8. The Symantec Software is copyrightable subject matter, and Symantec owns
24 exclusive rights under the Copyright Act to reproduce and distribute to the public copies of
25 Symantec Software in the United States. A list of registrations including but not limited to the
26 Symantec Software is attached hereto as Exhibit A ("Symantec's Copyrights").

27 9. Products manufactured and sold by Symantec bear Symantec's trademarks,
28 including without limitation, the GHOST, GOBACK, NORTON, PCANYWHERE, and
SYMANTEC trademarks (collectively "Symantec's Trademarks"). Symantec uses Symantec's
Trademarks on computer software as indicia of Symantec's high quality products. Each year
Symantec expends significant resources to develop and maintain the considerable goodwill it
enjoys in Symantec's Trademarks and in its reputation for high quality.

10. Symantec has secured registrations for Symantec's Trademarks, all of which are valid, extant and in full force and effect. Symantec's Trademarks are exclusively owned by Symantec. A non-exhaustive list of registrations is attached hereto as Exhibit B. Symantec, or its predecessors in interest, has continuously used each of Symantec's Trademarks from the registration date, or earlier, until the present and at all times relevant to the claims alleged in this Complaint.

11. As a result of advertising and sales, together with longstanding consumer acceptance, Symantec's Trademarks identify Symantec's products and authorized commercial distribution of these products. Symantec's Trademarks have each acquired secondary meaning in the minds of consumers throughout the United States and the world. Symantec's Copyrights and Symantec's Trademarks are collectively referred to herein as "Symantec's Intellectual Properties."

B. Defendants

12. Defendant Joseph Teshome, an individual and doing business as Pronet Cyber Technologies ("Teshome") is an individual. Symantec is informed and believes that Teshome is a resident of Alexandria, Virginia. Teshome transacts business as pronetcd.com and ussoftwarestore.com by selling, offering for sale, importing, advertising and distributing the Unauthorized Software Product in the State of California, among other places.

13. Upon information and belief, Does 1 – 10 are either entities or individuals who are subject to the jurisdiction of this Court. Upon information and belief, Does 1 – 10 are principals, supervisory employees, or suppliers of one or other of the named defendants or other entities or individuals who are, in this judicial district, manufacturing, distributing, selling and/or offering for sale merchandise without authorization that infringes Symantec's Intellectual Properties. The identities of the various Does are unknown to Symantec at this time. The Complaint will be amended to include the names of such individuals when identified. Teshome and Does 1 – 10 are collectively referred to herein as "Defendants."

IV. Defendants' Infringing Activities

14. Defendants are involved in the manufacture, purchase, distribution, offering for sale and/or sale of the Unauthorized Software Product bearing the Symantec Trademarks to the general public. Defendants do so using the Websites.

15. Symantec is informed and believes and based thereon alleges that Defendants processes purchases of the Unauthorized Software Product incorporating likenesses of one or more of the Symantec Intellectual Properties.

1 16. Defendants also use images confusingly similar or identical to Symantec's
2 Trademarks, to confuse consumers and aid in the promotion of their unauthorized products.
3 Defendants' use of Symantec's Trademarks includes importing, advertising, displaying,
4 distributing, selling and/or offering to sell unauthorized copies of the Symantec Software.
5 Defendants' use began long after Symantec's adoption and use of Symantec's Trademarks, and
6 after Symantec obtained the copyright and trademark registrations alleged above. Neither
7 Symantec nor any authorized agents have consented to Defendants' use of the Symantec
8 Trademarks.

9 17. Defendants' actions have confused and deceived, or threatened to confuse and
10 deceive, the consuming public concerning the source and sponsorship of the unauthorized copies of
11 the Symantec Software offered, sold and distributed by Defendants. By their wrongful conduct,
12 Defendants have traded upon and diminished Symantec's goodwill.

13 **FIRST CLAIM FOR RELIEF**

14 **(For Copyright Infringement)**

15 18. Symantec repeats and realleges all of the allegations contained in paragraphs 1
16 through 17, inclusive, as though set forth herein in full.

17 19. As alleged herein, Defendants' activities infringe valid and effective copyrights
18 registered by Symantec, and induce, cause, and materially contribute to infringement. Defendants'
19 infringement was willful.

20 20. Symantec has suffered and continues to suffer direct and actual damages as a result
21 of Defendants' infringing conduct. The full extent of such damages, including profits by
22 Defendants, will be determined following the accounting by Defendants pursuant to 17 U.S.C. §
23 504. Prior to final judgment Symantec may elect to recover statutory damages of up to \$150,000
24 for each of Symantec's Copyrights infringed, as an alternative to actual damages and profits.

25 21. Symantec has no other adequate remedy at law and has suffered and continues to
26 suffer irreparable harm and damage as a result of Defendants' acts. Unless enjoined by the Court,
27 Defendants' infringing activity will continue, with attendant irreparable harm to Symantec.
28 Accordingly, Symantec seeks injunctive relief pursuant to 17 U.S.C § 502 and seizure of
unauthorized copies of the Symantec Software, including the means of production as provided by
17 U.S.C. § 503.

 22. By reason of the foregoing, Symantec has incurred and will continue to incur
attorneys' fees and other costs in connection with the prosecution of its claims. Symantec is

1 entitled to recover its fees and costs from the Defendants, and each of them, pursuant to 17 U.S.C.
2 § 505.

3 **SECOND CLAIM FOR RELIEF**

4 **(For Trademark Infringement)**

5 23. Symantec repeats and realleges all of the allegations contained in paragraphs 1
6 through 22, inclusive, as though set forth herein in full.

7 24. Defendants' manufacture, importation, advertisement, display, promotion,
8 marketing, distribution, sale and/or offer for sale of the unauthorized copies of the Symantec
9 Software is likely to cause confusion or to cause mistake or to deceive the relevant public and trade
10 regarding the affiliation, sponsorship, endorsement or approval of the Unauthorized Software
11 Product by Symantec. Such confusion, mistake and deception is aggravated by the use of
12 Symantec's Trademarks on the Unauthorized Software Product in the same type of goods made,
13 imported and sold by or under authority of Symantec.

14 25. Defendants, and each of them, acted with knowledge of the federally registered
15 trademarks alleged herein and of the valuable goodwill Symantec enjoys in connection therewith,
16 with intent to confuse, mislead and deceive the public into believing that the unauthorized copies of
17 the Symantec Software was made, imported and sold by Symantec, or are in some other manner,
18 approved or endorsed by Symantec.

19 26. Symantec has suffered and continues to suffer irreparable harm and damage as a
20 result of Defendants' acts of trademark infringement in amounts thus far not determined but within
21 the jurisdiction of this Court, which amounts should each be trebled pursuant to 15 U.S.C. § 1117.
22 In order to determine the full extent of such damages, including such profits as may be recoverable
23 under 15 U.S.C. § 1117, Symantec will require an accounting from each Defendant of all monies
24 generated from the manufacture, importation, distribution and/or sale of the Unauthorized Software
25 Product as alleged herein. In the alternative, Symantec may elect to recover statutory damages
26 pursuant to 15 U.S.C. § 1117 (c).

27 27. Symantec has no other adequate remedy at law and has suffered and continues to
28 suffer irreparable harm and damage as a result of the above-described acts of infringement.
Symantec is informed and believes, and upon that basis alleges, that, unless enjoined by the Court,
the unlawful infringement will continue with irreparable harm and damage to Symantec.
Accordingly, Symantec seeks and requests preliminary and permanent injunctive relief pursuant to
15 U.S.C § 1116.

1 28. By reason of the foregoing, Symantec has incurred and will continue to incur
2 attorneys' fees and other costs in connection with the prosecution of its claims herein, which
3 attorneys' fees and costs Symantec is entitled to recover from Defendants, and each of them,
4 pursuant to 15 U.S.C. § 1117 (c).

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Symantec asks this Court to order:

7 A. That Defendants, their agents, servants, employees, representatives, successor and
8 assigns, and all persons, firms, corporations or other entities in active concert or participation with
any of said Defendants, be immediately and permanently enjoined from:

- 9 1) Directly or indirectly infringing Symantec's Intellectual Properties in any manner,
10 including generally, but not limited to, reproduction, manufacture, importation,
11 distribution, advertising, selling and/or offering for sale any merchandise which
infringes said Symantec's Intellectual Properties, and, specifically:
12 2) Reproducing, importing, manufacturing, distributing, advertising, selling and/or
13 offering for sale the Unauthorized Software Product or any other unauthorized products
14 which picture, reproduce, copy or use the likenesses of or bear a confusing and/or
15 substantial similarity to any of Symantec's Intellectual Properties;
16 3) Reproducing, importing, manufacturing, distributing, advertising, selling and/or
17 offering for sale in connection thereto any unauthorized promotional materials, labels,
18 packaging or containers which picture, reproduce, copy or use the likenesses of or bear
a confusing and/or substantial similarity to any of Symantec's Intellectual Properties;
19 4) Engaging in any conduct that tends falsely to represent that, or is likely to confuse,
20 mislead or deceive purchasers, Defendants' customers and/or members of the public to
21 believe the actions of Defendants, the products sold by Defendants, or Defendants
22 themselves are connected with Symantec, are sponsored, approved or licensed by
23 Symantec, or are in some way affiliated with Symantec;
24 5) Affixing, applying, annexing or using in connection with the importation, manufacture,
25 distribution, advertising, sale and/or offer for sale or other use of any goods or services,
26 a false description or representation, including words or other symbols, tending to
falsely describe or represent such goods as being those of Symantec;
27 6) Otherwise competing unfairly with Symantec in any manner;
28 7) Destroying or otherwise disposing of

- a. Merchandise falsely bearing Symantec's Intellectual Properties;
- b. Any other products which picture, reproduce, copy or use the likenesses of or bear a substantial similarity to any of Symantec's Intellectual Properties;
- c. Any labels, packages, wrappers, containers or any other unauthorized promotion or advertising material item which reproduces, copies, counterfeits, imitates or bears any of Symantec's Intellectual Properties;
- d. Any molds, screens, patterns, plates, negatives or other elements used for making or manufacturing products bearing Symantec's Intellectual Properties;
- e. Any sales and supply or customer journals, ledgers, invoices, purchase orders, inventory control documents, bank records, catalogs and all other business records, believed to concern the manufacture, purchase, advertising, sale or offering for sale of Unauthorized Software Product;

B. That Symantec and its designees are authorized to seize the following items which are in Defendants' possession, custody or control:

- 1) All Unauthorized Software Product;
- 2) Any other unauthorized product which reproduces, copies, counterfeits, imitates or bear any of the Symantec's Intellectual Properties, or any part thereof;
- 3) Any molds, screens, patterns, plates, negatives, machinery or equipment, specifically including computers, servers, optical disc burners and other hardware used for making or manufacturing Unauthorized Software Product or unauthorized product which reproduces, copies, counterfeits, imitates or bears any of the Symantec's Intellectual Properties, or any part thereof.

C. That those Defendants infringing upon Symantec's Intellectual Properties be required to pay actual damages increased to the maximum extent permitted by law and/or statutory damages at Symantec's election;

D. That actual damages be trebled pursuant to 15 U.S.C. § 1117;

E. That Defendants account for and pay over to Symantec all damages sustained by Symantec and profits realized by Defendants by reason of Defendants' unlawful acts herein alleged and that those profits be increased as provided by law;

1 F. That Symantec recovers from Defendants its costs of this action and reasonable
2 attorneys' fees; and

3 G. That Symantec has all other and further relief as the Court may deem just and proper
4 under the circumstances.

5 Dated: March 25, 2008

J. Andrew Coombs, A Professional Corp.

6
7 By: 

J. Andrew Coombs

Annie S. Wang

8 Attorneys for Plaintiff Symantec Corporation
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DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff Symantec Corporation hereby demands a trial by jury of all issues so triable.

Dated: March 15, 2008

J. Andrew Coombs, A Professional Corp.

By: 

J. Andrew Coombs

Annie S. Wang

Attorneys for Plaintiff Symantec Corporation

EXHIBIT A**Copyright Registrations**

<u>Copyright Registration No.:</u>	<u>Title of Work:</u>	<u>Rights Owner:</u>
TX-4-715-125	Ghost	Symantec Corporation
TX-4-715-126	Ghost Explorer	Symantec Corporation
TX-4-715-127	Ghost v. 4.0a	Symantec Corporation
TX-4-715-123	Ghost 3.1a	Symantec Corporation
TX-4-715-124	Ghost 5.0a	Symantec Corporation
TX-4-715-125	Ghost 5.0e	Symantec Corporation
TX-6-361-699	Ghost 9.0	Symantec Corporation
TX-6-358-626	Norton Ghost 10.0	Symantec Corporation
TX-6-361-698	Norton Ghost 2003	Symantec Corporation
TX-4-739-697	Norton AntiVirus v. 4.0	Symantec Corporation
TX-4-832-174	Norton AntiVirus v. 5.0	Symantec Corporation
TX-4-908-397	Norton AntiVirus v. 5.00.02	Symantec Corporation
TX-5-704-654	Norton AntiVirus	Symantec Corporation
TX-6-312-240	Norton AntiVirus 2006	Symantec Corporation
TX-3-343-741	Symantec AntiVirus for Macintosh 3.0	Symantec Corporation
TX-3-772-059	Norton Utilities	Symantec Corporation
TX-4-396-091	Norton Utilities for Windows 95	Symantec Corporation
TX-4-421-276	Norton utilities for Windows 95 v.2.0	Symantec Corporation
TX-4-024-772	Norton Utilities v. 7.0	Symantec Corporation
TX-4-024-773	Norton Utilities v. 8.0	Symantec Corporation
TX-4-024-802	Norton utilities Windows 95	Symantec Corporation
TX-6-358-627	pcAnywhere v.10.5	Symantec Corporation
TX-6-358-628	pcAnywhere v. 11.0	Symantec Corporation
TX-4-977-907	pcAnywhere ce	Symantec Corporation
TX-6-358-647	pcAnywhere v. 12.0	Symantec Corporation
TX-5-300-088	pcAnywhere v. 9.0	Symantec Corporation
TX-5-300-087	pcAnywhere v. 9.2	Symantec Corporation
TX-4-977-907	pcAnywhere ce	Symantec Corporation
TX-5-382-105	Goback v. 3.0	Symantec Corporation
TX-5-382-108	Goback RTL v. 222	Symantec Corporation
TX-5-408-192	Goback v. 3.04	Symantec Corporation
TX-5-510-690	Goback v. 3.03	Symantec Corporation
TX-5-510-691	Goback v. 3.0	Symantec Corporation
TXu-1-060-557	PartitionMagic 8.0	Symantec Corporation

EXHIBIT B**Trademark Registrations**

<u>Trademark Registration No.:</u>	<u>Title of Work:</u>	<u>Rights Owner:</u>
1107115	Ghost	Symantec Corporation
2271088	GoBack	Symantec Corporation
2243057	Live Update	Symantec Corporation
1758084	Norton AntiVirus	Symantec Corporation
2488092	Norton SystemWorks	Symantec Corporation
1781148	pcAnywhere	Symantec Corporation
2205386	Symantec	Symantec Corporation
2540842	Norton SystemWorks	Symantec Corporation
1508960	Norton Utilities	Symantec Corporation
1981682	PartitionMagic	Symantec Corporation
1683688	Symantec	Symantec Corporation
1654777	Symantec	Symantec Corporation
3097024	Symantec	Symantec Corporation
3009890	Symantec	Symantec Corporation
3182978	WinFax	Symantec Corporation